

§ 604.34

Part without having received a complaint. The investigation may include, without limitation, any of the actions described in § 604.32.

(b) Following the initiation of an investigation under this section, FTA sends a notice to the entities subject to investigation. The notice will set forth the areas of FTA's concern and the reasons; request a response to the notice within 30 days of the date of service; and inform the respondent that FTA will, in its discretion, invite good faith efforts to resolve the matter.

(c) If the matters addressed in the FTA notice are not resolved informally, the Chief Counsel may refer the matter to a Presiding Official.

Subpart H—Decisions by FTA and Appointment of a Presiding Official (PO)

§ 604.34 Chief Counsel decisions and appointment of a PO.

(a) After receiving a complaint consistent with § 604.27, and conducting an investigation, the Chief Counsel may:

- (1) Issue a decision based on the pleadings filed to date;
- (2) Appoint a PO to review the matter; or
- (3) Dismiss the complaint pursuant to § 604.28.

(b) If the Chief Counsel appoints a PO to review the matter, the Chief Counsel shall send out a hearing order that sets forth the following:

- (1) The allegations in the complaint, or notice of investigation, and the chronology and results of the investigation preliminary to the hearing;
- (2) The relevant statutory, judicial, regulatory, and other authorities;
- (3) The issues to be decided;
- (4) Such rules of procedure as may be necessary to supplement the provisions of this Part;
- (5) The name and address of the PO, and the assignment of authority to the PO to conduct the hearing in accordance with the procedures set forth in this Part; and
- (6) The date by which the PO is directed to issue a recommended decision.

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§ 604.35 Separation of functions.

(a) Proceedings under this part shall be handled by an FTA attorney, except that the Chief Counsel may appoint a PO, who may not be an FTA attorney.

(b) After issuance of an initial decision by the Chief Counsel, the FTA employee or contractor engaged in the performance of investigative or prosecutorial functions in a proceeding under this part shall not, in that case or a factually related case, participate or give advice in a final decision by the Administrator or his or her designee on written appeal, and shall not, except as counsel or as witness in the public proceedings, engage in any substantive communication regarding that case or a related case with the Administrator on written appeal.

Subpart I—Hearings

§ 604.36 Powers of a PO.

A PO may:

- (a) Give notice of, and hold, pre-hearing conferences and hearings;
- (b) Administer oaths and affirmations;
- (c) Issue notices of deposition requested by the parties;
- (d) Limit the frequency and extent of discovery;
- (e) Rule on offers of proof;
- (f) Receive relevant and material evidence;
- (g) Regulate the course of the hearing in accordance with the rules of this part to avoid unnecessary and duplicative proceedings in the interest of prompt and fair resolution of the matters at issue;
- (h) Hold conferences to settle or to simplify the issues by consent of the parties;
- (i) Dispose of procedural motions and requests;
- (j) Examine witnesses; and
- (k) Make findings of fact and conclusions of law and issue a recommended decision.

§ 604.37 Appearances, parties, and rights of parties.

(a) Any party to the hearing may appear and be heard in person and any party to the hearing may be accompanied, represented, or advised by an